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10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION
14

15 CLK GROUP INC., a California
16 corporation,

17 Plaintiff,

18 vs.

19 AI CHAUG INVESTMENT LIMITED,
20 a Hong Kong limited liability company;
21 ZUOWEI LIN, an individual;
22 ZHAO YANG, an individual;
23 RUOBING ZHOU, an individual; and
24 DOES 1-10, inclusive,

25 Defendants.

Case No. 2:15-cv-04348

COMPLAINT FOR:

1. **FRAUDULENT TRADEMARK REGISTRATION**
2. **CANCELLATION OF TRADEMARK**
3. **TRADEMARK INFRINGEMENT**
4. **UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

26 Plaintiff CLK GROUP, INC. for its Complaint alleges as follows:
27
28

THE PARTIES

1
2 1. Plaintiff CLK GROUP, INC. (“Plaintiff” or “CLK”) is, and at all times
3 relevant herein was, a corporation duly organized and existing under the laws of the
4 State of California and having its principal place of business in the City of Industry,
5 in the County of Los Angeles, California. Plaintiff is the owner of the trademarks,
6 NakedShield and SkinGuardz.

7 2. Plaintiff is informed and believes and based thereon alleges that
8 Defendant AI CHAUG INVESTMENT LIMITED (“Ai Chaug”) is, and at all times
9 relevant herein was, a limited liability company duly organized in The Hong Kong
10 Special Administrative Region of the People’s Republic of China, and doing
11 business worldwide, including the State of California.

12 3. Plaintiff is informed and believes and based thereon alleges that
13 Defendant ZUOWEI LIN (“Lin”), is, and at all times relevant herein was, an
14 individual residing in Hong Kong, and doing business worldwide, including the
15 State of California. Plaintiff is further informed and believes and based thereon
16 alleges that Lin is a principal of Ai Chaug, and that he has directed the activities of
17 Ai Chaug, as alleged below.

18 4. Plaintiff is informed and believes and based thereon alleges that
19 Defendant ZHAO YANG (“Yang”), is, and at all times relevant herein was, an
20 individual residing in Hong Kong, and doing business worldwide, including the
21 State of California. Plaintiff is further informed and believes and based thereon
22 alleges that Yang is a principal of Ai Chaug, and that he has directed the activities of
23 Ai Chaug, as alleged below.

24 5. Plaintiff is informed and believes and based thereon alleges that
25 Defendant RUOBING ZHOU (“Zhou”) is, and at all times relevant herein was, an
26 individual residing in the State of Tennessee, and doing business worldwide,
27 including the State of California.

28 6. The true names and capacities, whether individual, corporate, associate

1 or otherwise of defendants named herein as Does 1 through 10, inclusive, are
2 unknown to Plaintiff at this time. Plaintiff will amend this complaint when the same
3 become fully ascertained.

4 7. Plaintiff is informed and believes and based thereon alleges that at all
5 times relevant herein, all defendants herein, whether named or fictitiously
6 designated, were the agents, servants, employees, joint venturers, and/or the alter
7 egos of each of the remaining defendants, and that the acts of each defendant were
8 within the course and scope of their agency, service and employment and were
9 undertaken with the permission, consent, and/or ratification of each other defendant.

10 8. Plaintiff is informed and believes and based thereon alleges that at all
11 times relevant herein, all defendants conducted business within this District and may
12 be found in this District. From this point forward, Defendants Ai Chaug, Lin, Yang,
13 Zhou, and Does 1-10 shall be referred to collectively as “Defendants”.

14 **JURISDICTION AND VENUE**

15 9. The Court has subject matter jurisdiction over this action pursuant to 15
16 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338 because it involves claims arising
17 under the Lanham Act. This Court also has original jurisdiction over this action
18 under 15 U.S.C. § 1338(b) in that it asserts a claim for unfair competition that is
19 joined with a substantial and related trademark claim. This court has supplemental
20 jurisdiction over the non-federal claims set forth herein under 28 U.S.C. § 1367
21 because those claims are so related to the federal claims that they form part of the
22 same case or controversy.

23 10. Venue in the Central District of California is proper because substantial
24 part of the events or omissions giving rise to Plaintiff’s claims occurred in this
25 District, and because Defendants are subject to the Court’s personal jurisdiction with
26 respect to this action in this District pursuant to 28 U.S.C. § 1391.

FACTUAL BACKGROUD

A. CLK's Trademark Rights

11. Since at least as early as 2005, CLK has used and has used in interstate commerce the NakedShield and SkinGuardz trademarks in connection with the marketing and sale of cellphone cases and other cell phone accessories through internet retailers including, but not limited to, Amazon and eBay.

12. Since at least as early as 2005, CLK has used the symbol TM in connection with its NakedShield and SkinGuardz trademarks to signify its trademark rights in these marks.

13. Over the past ten (10) years, CLK has expended significant time, money, and effort to establish public recognition of its NakedShield and SkinGuardz trademarks as identifying them as the source of high quality cellphone accessories and customer service. CLK has used its NakedShield and SkinGuardz trademarks in advertising and promoting its sale of these goods continuously in interstate commerce through the World Wide Web. As a result of these efforts, CLK has established substantial consumer recognition of the NakedShield and SkinGuardz trademarks and good will, and the subject trademarks have become some of CLK's most valuable assets.

B. Defendants' Fraudulent Trademark Registration

14. Nearly ten (10) years after CLK's first use and sale of its NakedShield and SkinGuardz trademarks in interstate commerce, on or about July 16, 2014, Defendants filed an application for federal trademark registration of CLK's NakedShield trademark, Serial No. 86338308 (a true and correct copy of the Trademark/Service Mark Application, Principal Register, is attached hereto as **Exhibit A**), and an application for federal trademark registration of CLK's SkinGuardz trademark, Serial No. 86338320 (a true and correct copy of the Trademark/Service Mark Application, Principal Register, is attached hereto as **Exhibit B**), with the United States Patent and Trademark Office (the "USPTO").

1 Defendants' NakedShield and SkinGuardz trademark applications shall hereinafter
2 and collectively be referred to as the "Trademark Applications".

3 15. Defendant Ai Chaug is listed as the applicant and owner of the marks in
4 the Trademark Applications; Defendant Zhou is listed as the applicant's
5 correspondent in the Trademark Applications; Defendant Lin is listed as the
6 authorized signatory to the NakedShield trademark application; and Defendant Zhao
7 Yang is listed as the authorized signatory to the SkinGuardz trademark application.

8 16. In the Trademark Applications, Defendants represented that the
9 NakedShield and SkinGuardz trademarks were first used at least as early as March
10 18, 2008, and first used in commerce at least as early as March 18, 2008, and are
11 now in use in such commerce.

12 17. In the Trademark Applications, Defendants represented that the
13 NakedShield and SkinGuardz trademarks are used in commerce in connection with
14 the following class of goods:

15 Portable telephones; Video telephones; Earphones; Batteries, electric;
16 Chargers for electric batteries; Cases for telephones; Beeper carrying
17 cases; Cell phone straps; Satellite navigational apparatus; Global
18 Positioning System (GPS) apparatus; Fitted plastic films known as
19 skins for covering and providing a scratch proof barrier or protection
20 for electronic devices, namely, MP3 players, mobile telephones, smart
21 telephones, digital cameras, global positioning systems and personal
22 digital assistants; Cell phone cases."

23 18. Defendant Lin signed the following declaration to the application for
24 federal registration of the NakedShield trademark:

25 The signatory believes that: if the applicant is filing the application
26 under 15 U.S.C. Section 1051(a), the applicant is the owner of the
27 trademark/service mark sought to be registered; the applicant or the
28 applicant's related company or licensee is using the mark in commerce
on or in connection with the goods/services in the application, and
such use by the applicant's related company or licensee inures to the
benefit of the applicant; the specimen(s) shows the mark as used on or
in connection with the goods/services in the application; and/or if the

1 applicant filed an application under 15 U.S.C. Section 1051(b),
 2 Section 1126(d), and/or Section 1126(e), the applicant is entitled to
 3 use the mark in commerce; the applicant has a bona fide intention to
 4 use or use through the applicant's related company or licensee the
 5 mark in commerce on or in connection with the goods/services in the
 6 application. **The signatory believes that to the best of the**
 7 **signatory's knowledge and belief, no other person has the right to**
 8 **use the mark in commerce, either in the identical form or in such**
 9 **near resemblance as to be likely, when used on or in connection**
 10 **with the goods/services of such other person, to cause confusion or**
 11 **mistake, or to deceive.** The signatory being warned that willful false
 12 statements and the like are punishable by fine or imprisonment, or
 both, under 18 U.S.C. Section 1001, and that such willful false
 statements and the like may jeopardize the validity of the application
 or any registration resulting therefrom, declares that all statements
 made of his/her own knowledge are true and all statements made on
 information and belief are believed to be true. (Emphasis added.)

13 On information and belief, Defendant Lin, a principal of Defendant Ai
 14 Chaug, signed such declaration on record with the USPTO as to the
 15 NakedShield mark despite his actual knowledge of the existence of CLK's
 16 earlier identical mark on similar goods and in violation of 15 U.S.C. § 1120.

17 19. Defendant Yang signed the same above-cited declaration to the
 18 application for federal registration of the SkinGuardz trademark. On information
 19 and belief, Defendant Yang, a principal of Defendant Ai Chaug, signed such
 20 declaration on record with the USPTO as to the SkinGuardz mark despite his actual
 21 knowledge of the existence of CLK's earlier identical mark on similar goods and in
 22 violation of 15 U.S.C. § 1120.

23 20. On or about March 24, 2015, Defendants obtained federal trademark
 24 registration of the NakedShield trademark, US Registration No. 4707334 (a true and
 25 correct copy of the Registration Certificate is attached hereto as **Exhibit C**), and
 26 federal trademark registration of the SkinGuardz trademark, US Registration No.
 27 4707336 (a true and correct copy of the Registration Certificate is attached hereto as
 28 **Exhibit D**).

1 21. On information and belief, Defendants sought the aforementioned
2 registrations with full knowledge of CLK's prior, continuing, and identical marks on
3 confusingly similar goods in interstate commerce.

4 22. On information and belief, Defendants, in making said representations
5 to the USPTO, intended to deceive the USPTO, and as a consequence, did in fact
6 deceive the USPTO, and were subsequently issued federal trademark registrations
7 that they would not otherwise have been issued but for their intentional
8 misrepresentations and omissions. On information and belief, Defendants are
9 continuing at this time to engage in this nefarious activity.

10 **C. CLK's Discovery of Defendants' Fraudulent Trademark Registration**

11 23. In or around March 2015, CLK first became aware that Defendants
12 applied for and obtained federal registration of CLK's prior, continuing, and
13 identical NakedShield and SkinGuardz trademarks on similar goods in connection
14 with the marketing and sale of, *inter alia*, cellphone cases and cellphone accessories.

15 24. At no time has CLK authorized Defendants, directly or indirectly, to use
16 or adapt CLK's NakedShield and SkinGuardz marks in connection with any good or
17 service, commercial or otherwise.

18 25. Defendants' use of the NakedShield and SkinGuardz trademarks in
19 connection with the marketing and sale of, *inter alia*, cellphone cases and cellphone
20 accessories directly competes with the marketing and sale of CLK's cellphone cases
21 and cellphone accessories and are sold in overlapping channels of trade. Defendants'
22 registration and use of the NakedShield and SkinGuardz trademarks in connection
23 with the marking and sale of said products is likely to cause consumer confusion as
24 to the source or sponsorship of Defendants' goods.

25 26. On or about April 3, 2015, CLK sent a cease and desist letter to Ai
26 Chaug c/o Ruobing Zhou demanding, *inter alia*, that Defendants cease all use of the
27 infringing NakedShield and SkinGuardz trademarks, and that Defendants cancel
28 their trademark registration of each mark. Specifically, CLK requested that

1 Defendants provide the following no later than April 13, 2015: a written assurance
 2 that Defendants will cease using the infringing NakedShield and SkinGuardz
 3 trademarks and any other trademark and/or logo that is likely to cause confusion with
 4 CLK's trademarks; and evidence that demonstrates that Ai Chaug has canceled its
 5 trademark registration at the USPTO. CLK did not receive a response from any
 6 Defendants.

7 **FIRST CLAIM FOR RELIEF**

8 **(Against All Defendants for False or Fraudulent Trademark Registration** 9 **Under 15 U.S.C. § 1120)**

10 27. CLK repeats, re-alleges and incorporates by reference each and every
 11 allegation set forth in all preceding paragraphs as though fully set forth herein.

12 28. As set forth above, Defendants applied for and obtained two federal
 13 trademark registrations based on identical renditions of CLK's earlier NakedShield
 14 and SkinGuardz trademarks.

15 29. On information and belief, Defendants sought the aforementioned
 16 registrations with full knowledge of CLK's prior, continuing, and identical marks on
 17 confusingly similar goods in interstate commerce.

18 30. On information and belief, Defendants, with actual knowledge of
 19 CLK's prior, continuing, and identical marks on confusingly similar goods in
 20 interstate commerce, intentionally did not report such to the USPTO, despite a clear
 21 obligation to do so under 15 U.S.C. § 1051(a) (3)(D). Specifically, applicants for
 22 trademark registration are required to certify the following to the USPTO: "[T]o the
 23 best of the verifier's knowledge and belief, no other person has the right to use such
 24 mark in commerce either in the identical form thereof or in such near resemblance
 25 thereto as to be likely, when used on or in connection with the goods of such other
 26 person, to cause confusion, or to cause mistake, or to deceive..." 15 U.S.C. §
 27 1051(a) (3)(D). On information and belief, Defendant Lin, a principal of Defendant
 28 Ai Chaug, signed such declaration on record with the USPTO as to the NakedShield

1 mark despite his actual knowledge of the existence of CLK's earlier identical mark
 2 on similar goods and in violation of 15 U.S.C. § 1120. On information and belief,
 3 Defendant Yang, a principal of Defendant Ai Chaug, signed such declaration on
 4 record with the USPTO as to the SkinGuardz mark despite his actual knowledge of
 5 the existence of CLK's earlier identical mark on similar goods and in violation of 15
 6 U.S.C. § 1120.

7 31. On information and belief, Defendants, in making said representations
 8 to the USPTO, intended to deceive the USPTO, and as a consequence, did in fact
 9 deceive the USPTO, and were subsequently issued federal trademark registrations
 10 that they would not otherwise have been issued but for their intentional
 11 misrepresentations and omissions. On information and belief, Defendants are
 12 continuing at this time to engage in this nefarious activity.

13 32. As a consequence of Defendants' false statements to and/or fraud upon
 14 the USPTO, CLK, as well as the consuming public, have been injured and continue
 15 to be injured by the USPTO's grant of the aforementioned registrations to
 16 Defendants.

17 **SECOND CLAIM FOR RELIEF**

18 **(Against All Defendants for Cancellation of Federal Trademark Applications** 19 **And Registrations Under 15 U.S.C. § 1119)**

20 33. CLK repeats, re-alleges and incorporates by reference each and every
 21 allegation set forth in all preceding paragraphs as though fully set forth herein.

22 34. As a result and on account of the alleged false statements and fraud set
 23 forth and alleged *infra* in its First Claim for Relief, CLK hereby seeks cancellation of
 24 each of Defendants' issued and pending federal trademark applications bearing in
 25 whole or part the names NakedShield and SkinGuardz.

26 35. In the conjunctive or alternative, CLK further seeks cancellation of each
 27 of Defendants' issued and pending federal trademark applications bearing in whole
 28 or part the names NakedShield and SkinGuardz based upon the separate and

1 independent ground of CLK's continuing prior use of identical marks attached to
2 confusingly similar goods.

3 **THIRD CLAIM FOR RELIEF**

4 **(Against All Defendants for Trademark Infringement**

5 **Under 15 U.S.C. § 1125(A)(1)(A) and California Common Law)**

6 36. CLK repeats, re-alleges and incorporates by reference each and every
7 allegation set forth in all preceding paragraphs as though fully set forth herein.

8 37. CLK is the sole and lawful owner of valid common law trademarks,
9 NakedShield and SkinGuardz.

10 38. CLK's NakedShield and SkinGuardz marks qualify for registrability
11 under 15 U.S.C. §§ 1052 and 1053 as inherently distinctive trademarks given that,
12 when viewed independently of the goods they are associated with, they require
13 significant imagination to arrive at the underlying goods, and Defendants needlessly
14 adopted identical marks in association with confusingly similar goods when they
15 could easily have selected from among many other marks and permutations of goods.
16 Alternatively or conjunctively, CLK's marks have, through their continuous and
17 exclusive use in interstate commerce for a period of at least ten (10) years prior to
18 Defendant's registration of the identical NakedShield and SkinGuardz marks,
19 achieved a high level of acquired distinction within the meaning of 15 U.S.C. §
20 1052(f). CLK's marks also qualify for registrability under Cal. Bus. & Prof. Code §
21 14220 for the same reasons.

22 39. At no time has CLK authorized Defendants, directly or indirectly, to use
23 or adapt CLK's NakedShield and SkinGuardz marks in connection with any good or
24 service, commercial or otherwise.

25 40. On information and belief, Defendants' production, sales, and
26 marketing of identical NakedShield and SkinGuardz marks on confusingly similar
27 goods have been and continue to be done willfully and with malice aforethought and
28 wanton disregard and prejudice to the rights of CLK, or else negligently. As a result,

1 CLK has suffered immeasurable pecuniary, psychological and reputation harm while
2 Defendants continue to reap ill-gotten and unjust gains realized as a result of its illicit
3 actions.

4 41. Defendants' willful infringement and malice are inferences clearly and
5 irrefutably drawn from the identical nature of Defendants' marks for use on
6 confusingly similar goods. These similarities are too extensive and comprehensive to
7 be the product of mere coincidence. The inescapable conclusion reached is that
8 Defendants have engaged in a wholesale misappropriation and counterfeiting of
9 CLK's marks, which evidences and underscores a most egregious form of
10 commercial immorality.

11 42. Accordingly, Defendants have, on or in connection with the use of the
12 confusingly similar NakedShield and SkinGuardz marks, used a term or terms that
13 is/are false or misleading within the meaning of 15 U.S.C. § 1125, so as to cause or
14 likely cause confusion or mistake or deception as to affiliation, connection, or
15 association of Defendants with CLK, or as to origin, sponsorship, or approval of their
16 goods, services, or commercial activities by CLK.

17 **FOURTH CLAIM FOR RELIEF**

18 **(Against All Defendants for Unfair Competition**

19 **Under Cal. Bus. & Prof. Code § 17200)**

20 43. CLK repeats, re-alleges and incorporates by reference each and every
21 allegation set forth in all preceding paragraphs as though fully set forth herein.

22 44. Defendants have engaged in acts alleged above that constitute
23 unlawful, unfair, and fraudulent business practices prohibited by Business &
24 Professions Code § 17200.

25 45. Unless restrained by this Court, these Defendants will continue to
26 engage in the acts of unfair competition, as alleged herein, thus tending to render
27 judgment in the instant action ineffectual. Plaintiff CLK has no adequate remedy at
28 law for the injuries caused by these Defendants' conduct, acts and omissions, and

1 the general public will be irreparably harmed if such acts and omissions are not
2 enjoined. Plaintiff is entitled to injunctive relief pursuant to Business & Professions
3 Code § 17203, to prohibit these acts and omissions and/or continued threatened acts
4 of Defendants, to prevent such irreparable harm from happening in the future.

5 46. As a result of these Defendants' conduct, acts and omissions, Plaintiff
6 CLK is entitled to equitable restitution of any and all profits, revenues,
7 compensation or other payments obtained by Defendants as a result of their acts of
8 unfair competition.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, in consideration of the foregoing, Plaintiff CLK respectfully
11 requests that this Court enter an Order granting it the following relief:

12 1. Entering a judgment that Defendants' trademark registrations were
13 procured by means of a false or fraudulent representation;

14 2. Pursuant to 15 U.S.C. § 1120, awarding any damages to Plaintiff that it
15 sustained and continues to sustain in consequence of Defendants' procurement of its
16 registration by means of a false or fraudulent representation;

17 3. Pursuant to 15 U.S.C. § 1119, ordering the Director of the United
18 States Patent and Trademark Office to cancel Defendants' trademark registrations
19 No. 4707334 and No. 4707336;

20 4. Entering a judgment that Plaintiff's trademark has been and continues
21 to be infringed by Defendants in violation of 15 U.S.C. § 1125(a);

22 5. Entering a judgment that Defendants' use of Plaintiff's trademarks
23 constitutes unfair competition in violation of California Business and Professions
24 Code § 17200;

25 6. Permanently enjoining and restraining the Defendants and each of their
26 agents, employees, officers, attorneys, successors, assigns, affiliates and any persons
27 in privity or active concert or participation with any of them from using the
28 NakedShield and SkinGuardz trademarks, or any other designation alone or in

1 combination with other words or symbols, as a trademark, trade name component or
2 otherwise, to market, advertise, distribute or identify Defendants' products where
3 that designation would create a likelihood of confusion, mistake or deception with
4 Plaintiff's marks;

5 7. Pursuant to 15 U.S.C. § 1116(a), directing Defendants to file with the
6 Court and serve on Plaintiff within thirty (30) days after issuance of an injunction, a
7 report in writing and under oath setting forth in detail the manner and form in which
8 Defendants have complied with the injunction;

9 8. Pursuant to 15 U.S.C. § 1118, requiring that Defendants and all others
10 acting under Defendants' authority, at their cost, be required to deliver up and
11 destroy all devices, literature, advertising, labels and other material in their
12 possession bearing the infringing designation;

13 9. Pursuant to 15 U.S.C. § 1119, enjoining the Director of the United
14 States Patent and Trademark Office from issuing to Defendants any trademark
15 registration for the NakedShield and SkinGuardz trademarks or any combination of
16 words or symbols that would create a likelihood of confusion, mistake or deception
17 with Plaintiff's marks;

18 10. Awarding Plaintiff all damages it sustained as the result of Defendants'
19 acts of infringement and unfair competition, said amount to be trebled, together with
20 prejudgment interest, pursuant to 15 U.S.C. § 1117;

21 11. Awarding to Plaintiff all profits received by Defendants from sales and
22 revenues of any kind made as a result of its infringing actions, said amount to be
23 trebled, after an accounting pursuant to 15 U.S.C. § 1117;

24 12. Awarding treble actual damages and profits pursuant to 15 U.S.C. §
25 1117(b) because Defendants' conduct was willful within the meaning of the Lanham
26 Act;

27 13. Awarding statutory damages pursuant to 15 U.S.C. § 1117(c) in an
28 amount (1) not less than \$1,000 or more than \$200,000 per counterfeit mark per type

1 of goods or services sold, offered for sale, or distributed, as the court considers just;
2 or (2) if the court finds that the use of the counterfeit mark was willful, not more
3 than \$2,000,000 per counterfeit mark per type of goods or services sold, offered for
4 sale, or distributed, as the court considers just;

5 14. Awarding Plaintiff its attorneys' fees and costs pursuant to 15 U.S.C. §
6 1117, because of the exceptional nature of this case resulting from Defendants'
7 deliberate infringing actions; and

8 15. Granting Plaintiff such other and further relief as the Court may deem
9 just.

10
11 DATED: June 9, 2015

Respectfully submitted,

12 LYNBERG & WATKINS

13
14 By /s/ Philip H. Lo

PHILIP H. LO

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Attorneys for Plaintiff CLK GROUP, INC.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff CLK GROUP, INC., respectfully demands a trial by jury on all issues so triable.

DATED: June 9, 2015

Respectfully submitted,

LYNBERG & WATKINS

Bv. /s/ Philip H. Lo

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